IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

RSA.No. 881 of 2006(E)

A.S.20/97 OF III ADDL.DISTRICT COURT, THIRUVANANTHAPURAM
O.S.406/75 OF II ADDL. MUNSIFF COURT, TRIVANDRUM

APPELLANTS/(APPELLANTS 3,4 AND 28TH RESPONDENT

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1. VASANTHI, D/O.KOCHUKRISHNAN NAIR,
   CHELLIALAKKAL, MEKKUMKARA PUTHEN VEEDU,
   VILAPPIL VILLAGE.

2. AJAYAN OF DO. DO.

3. CHANDRABABU, S/O.KOCHUKTISHNAN NADAR,
   DO. DO.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:(RESPONDENTS 2 TO 27 & 2ND ADDL.APPELLANT/
DEFENDANTS 1,2,4 TO 9)

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1. MALLAN NADAR RAMAN NADAR,
   MEKKUMKARA PUTHEN VEEDU,
   CHEKKADITHALAKKAL PUNNATHANATHU MURI,
   VILAPPIL VILLAGE.

2. MALLAN NADAR KESAVAN NADAR,
   DO. DO.

3. MATHU KUTTI CHELLAMMA,
   DO. DO.

4. MATHU KUTTI BHARGAVI,
   DO. DO.

5. B.SARASWATHI BAI, DO. DO.

6. A.S.STEEPHA OF DO. DO.

7. A.S.SHAJI OF DO. DO.

8. A.S.SHEELA OF DO. DO.

9. SUBRAMANIAN, S/O.NARAYANAN NADAR,
   VILAPPIL VILLAGE, MACHINATTU KIZHAKKUMKARA PUTHEN

VEEDU, PEYAD.

10. SARASWATHY OF DO. DO.

11. OMANA OF DO. DO.

12. RAJALOCHANA OF DO. DO.

13. KAUSALYA OF DO. DO.

14. RUGMINI OF DO. DO.

15. DEVENDRAN, DO. DO.

16. SUBRAHMONIAN NADAR,
CHERUKOTTU CHETTADITHALAIKAL VEEDU,
PUNNATHANATHU MURI, VILAPPIL VILLAGE.

17. PONNAMMA OF DO. DO.

18. SASIKUMAR, T.C.20/1936,
SASI ARTS, CHANGAZHASSERY VILLAGE,
TRIVANDRUM.

19. THANKAMMA, W/O.KESAVAN NADAR,
MEKKUMKARA PUTHEN VEEDU,
CHEKKADITHALAKKAL, PUNNATHANATHU,
PEYAD, VILAPPIL VILLAGE.

20. T.K.RAJAMMA,
D/O.KESAVAN NADAR, DO. DO.

21. T.K.SULOCHANA OF DO. DO.

22. T.K.MOHANAN, DO. DO.

23. T.K.BABY, DO. DO.

24. T.K.GEETHA OF DO. DO.

25. T.K.SUNDARESAN, DO. DO.

26. T.K.VASANTHA, DO. DO.

27. IVEY GEORGE, D/O.RAJAMMA,
CHELLIALAKKAL MEKKUMKARA PUTHEN VEEDU,
VILAPPIL VILLAGE.

R18 BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
ADV.HARISH HARI

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 2679/06 IN RSA 881/06

DISMISSED

16/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A.NO. 881 OF 2006

Dated 16th March 2007

J U D G M E N T

Legal heirs of 3rd defendant in O.S.406/75 on the file of Additional Munsiff court, Thiruvananthapuram are appellants. They were impleaded as appellants 3, 4 and 28th respondent in the first appeal on the death of 3rd defendant who was the appellant in A.S.20/97. First respondent in the appeal was the plaintiff in the suit and on his death respondents 10 to 16 were impleaded as legal heirs. Suit was filed for partition of 1/7th share of plaintiff. Preliminary decree was passed on 12/9/1977. Thereafter final decree application I.A.14314/77 was filed for passing a final decree. Commission was appointed and Commissioner submitted Exts.C1 report and C2 plan demarcating properties and dividing it in accordance with preliminary decree. Learned Munsiff passed a final decree on 7/6/1982 which was challenged before Sub court, Thiruvananthapuram in A.S.114/83. Learned Sub Judge set aside the final decree holding

that objections filed by appellants and plaintiff were not considered by Munsiff before passing the final decree. Learned Munsiff was directed to consider the objections and disposed the final decree afresh. Learned Munsiff thereafter accepted the report and plan and passed final decree on 10/9/1991 allotting plot PQVBUR measuring 17 cents and plot TFGHS measuring 13.428 cents as demarcated by the Commissioner in Ext.C2 plan and plot ABEF measuring 1 cent as in survey No.292/23 as demarcated in Ext.C2 plan. Final decree was challenged before District court, Thiruvananthapuram in A.S.20/97. Learned Additional District Judge after re-appreciation of case confirmed final decree and dismissed appeal. It is challenged in the second appeal.

2. Learned counsel appearing for appellants was heard. Argument of learned counsel appearing for appellants was that learned Sub Judge in A.S.114/83 directed learned Munsiff to consider the objections raised against the report and plan submitted Commissioner and courts below did not consider the objections properly and ignoring the fact that Commissioner has relied only the litho plan to identify and divide the property, accepted the report and plan and it is therefore

unsustainable. It was argued that when total extent as per the title deed is 2.75 acres, what was found by Commissioner was only 2.16 acres and balance extent was 59 cents was not located and therefore courts below should not have accepted the report and plan. It was also argued that Commissioner while dividing the properties as provided a way having an extent of 3 cents, which should not have been done as a road is available to the property and therefore final decree is to be set aside.

3. On hearing learned counsel appearing for appellants, I do not find any substantial question of law involved in the appeal. As rightly found by learned District Judge, Commissioner has found out that though extent shown in the title deed was 2.75 acres, extent now available is only 2.16 acres Commissioner could not locate the balance 59 cents. As per final decree only share of plaintiff was separated and allotted. Entire balance extent is now available with the defendants including appellants. Therefore, if extent of property available for division is 2.75 acres and not 2.16 acres, extent of the property now allotted to plaintiff is less and it should have been more and if so, the sufferer is actually the plaintiff. As found by learned District

Judge, plaintiff, because of his age, decided to forgo the right if any, over more extent and was satisfied with the extent allotted so that he could enjoy the property before his death which ultimately did not materialise. In such circumstances, I do not find any reason to interfere with allotment made by courts below.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.